S.B. CIVIL WRIT PETITION NO.4701/2003

Jagdish Chandra vs. State of Raj. & ors.

Date : 17.10.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. SS Rajpurohit, for the petitioner.

Mr. Kailash Joshi, for the respondents.

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Heard learned counsel for the parties.

The facts in brief are that the petitioner was the highest bidder, therefore, auction terminated in favour of the petitioner for Plot No.11 situated in Saraswati Nagar Scheme at Sector A. The petitioner was required to deposit 1/4th amount forthwith which he deposited on 26.11.2001. Thereafter, the petitioner deposited Rs.90,000/- on 29.12.2001, Rs.45,000/- on 24.1.2002 and Rs.20,440/- on 25.1.2002. The petitioner found that the land, which was auctioned by the U.I.T., cannot be used for raising construction because there was underground pipeline. The U.I.T. also realised the mistake and modified the plan itself. The respondent U.I.T. offered the petitioner alternative plot but the petitioner did not accept that plot and the petitioner demanded refund of deposited amount along with interest. The U.I.T. on 24.1.2002 passed the order of refund of Rs.3,34,440/-. No interest was paid to the petitioner over this amount. The petitioner, therefore, submitted an application before the U.I.T. requesting them

to make payment of interest as well for refund of Rs.3,371/- charged from the petitioner on account of interest on balance amount of plot. On this application, the amount of interest which was deposited by the petitioner amounting to Rs.3,371/- was refunded vide order dated 4.6.2003 by cheque dated 10.6.2003. Since interest was not paid to the petitioner, therefore, the petitioner served a notice for demand of justice and prayed that the petitioner may be paid interest over the entire amount of Rs.3,37,811/-. Despite this notice, interest amount has not been paid to the petitioner, therefore, the petitioner preferred this writ petition.

The respondent U.I.T. submitted reply to the writ petition and according to learned counsel for U.I.T., the scheme was amended and the petitioner was offered alternative plot but the petitioner did not accept the plot, therefore, it was not fault of U.I.T. and, therefore, the U.I.T. cannot be asked to pay interest over the amount which the petitioner deposited for plot no.11. It is also submitted that the entire amount, which the petitioner deposited, has been paid to him and that has been accepted by the petitioner, therefore also, no interest can be awarded.

I have considered the submissions of learned counsel for the parties and perused the record.

It is not in dispute that the petitioner gave bid for

the particular plot and he went on depositing the amount as required under the Rules and the entire cost of the plot was accepted by U.I.T. from the petitioner. It is not in dispute that the plot was defective to the extent that no construction could have been raised over the plot, therefore, the U.I.T. has no right to thrust upon the petitioner a plot which the petitioner is not intending to take. There was no fault of the petitioner whereas it was the fault of U.I.T. itself as the U.I.T. has not taken due care before putting the plot for auction.

In view of the above, the petitioner had two choices – (1) to accept the alternative plot or (2) to demand refund of the amount. The petitioner himself paid interest on delayed payment and there arises no question why the U.I.T. be given a special treatment of exoneration from liability of payment of interest over the amount which the petitioner deposited under belief that he will get the appropriate plot over which he may raise the construction.

In view of the above and in view of the Division Bench judgment of this Court delivered in the case of Surendra Singh and others vs. State of Rajasthan and others reported in 1998 WLC (Raj.) UC P.318, the petitioner is entitled for the interest. Since now the interest rate has come down, therefore, the petitioner is held to be entitled to interest at the rate of 9% p.a. over the amount which the petitioner deposited.

Accordingly, this writ petition is allowed and the

respondents are directed to pay interest to the petitioner over the amount which the petitioner has deposited for plot no.11 from the date of deposit till the amount has been paid to the petitioner at the rate of 9% p.a. within a period of two months from today.

(PRAKASH TATIA), J.

S.Phophaliya